

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

SENSITIVE

RECEIVED
FEDERAL ELECTION
COMMISSION

2012 SEP 27 PM 4: 20

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2012 SEP 27 PM 5: 06

FIRST GENERAL COUNSEL'S REPORT

CELA

AUDIT REFERRAL: 12-03

DATE REFERRED: July 25, 2012

DATE ACTIVATED: September 10, 2012

STATUTE OF LIMITATIONS: 7/31/12 (earliest)
1/29/14 (latest)

SOURCE:

AUDIT REFERRAL

RESPONDENT:

National Right to Life PAC and Joseph M.
Landrum in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a referral from the Audit Division ("Referral") following a Commission audit pursuant to 2 U.S.C. § 438(b). On July 11, 2012, the Commission approved the Final Audit Report ("FAR") of National Right to Life Political Action Committee and Joseph M. Landrum in his official capacity as treasurer ("NRTL PAC"), which recommended that the Commission adopt a finding that NRTL PAC misstated its financial activity in 2007 and 2008. See Attach. 1.

Based on a comparison of bank records with NRTL PAC's reported figures, the FAR showed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRTL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624, and overstated ending cash-on-hand by \$104,632. In 2008, it overstated

1304433504

1 disbursements by \$1,437,635 and understated ending cash-on-hand by \$1,300,378.¹ On
2 August 8, 2012, this Office notified the Respondents of the Referral in accordance with
3 Commission policy. *See* Agency Procedure for Notice to Respondents in Non-Complaint
4 Generated Matters, 74 Fed. Reg. 38617 (Aug. 4, 2009). NRTL PAC did not respond.²

5 We recommend that the Commission open a Matter Under Review ("MUR") and find
6 reason to believe that NRTL PAC violated 2 U.S.C. § 434(b) by misstating its financial activity.
7 Additionally, we recommend that the Commission enter into pre-probable cause conciliation
8 with NRTL PAC and approve the attached conciliation agreement.

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. Factual Background

11 The following tables set forth the discrepancies identified in the Referral for NRTL
12 PAC's beginning and ending cash balances, receipts, and disbursements for 2007 and 2008.
13 Each table is followed by an explanation of the misstatements.
14

Table 1: NRTL PAC 2007 Activity			
Item	Reported	Bank Records	Discrepancy
COH January 1, 2007	\$612,737	\$481,805	\$130,932 Overstated
Receipts	\$53,518	\$83,142	\$29,624 Understated
Disbursements	\$102,265	\$105,589	\$3,324 Understated
COH December 31, 2007	\$563,990	\$459,358	\$104,632 Overstated

¹ These figures were derived from a comparison of NRTL PAC's bank records to its most recently amended reports at the time of the audit. The audit also compared NRTL PAC's original reports with bank records, which showed that NRTL PAC had overstated disbursements in the amount of \$687,536 for 2007 and 2008. *See* Referral at 4.

² Having received no response to the referral notification, the Office of General Counsel contacted the treasurer to inquire whether a response was forthcoming. On September 7, 2012, NRTL PAC's treasurer confirmed that the Committee did not intend to submit a response.

13044333505

According to the Referral, the overstatement of beginning cash-on-hand by \$130,932 in 2007 likely resulted from prior period discrepancies. The understatement of receipts by \$29,624 resulted from unreported bank interest of \$14,771, unreported vendor refunds for radio ads of \$4,051, and an unexplained difference of \$10,802. NRTL PAC also understated disbursements by \$3,324, resulting in a \$104,632 overstatement of its ending cash-on-hand for 2007 ($\$130,932 - \$29,624 = \$101,308$; $\$101,308 + 3,324 = \$104,632$).

Table 2: NRTL PAC 2008 Activity			
Item	Reported	Bank Records	Discrepancy
COH January 1, 2008	\$563,990	\$459,358	\$104,632 Overstated
Receipts	\$3,626,011	\$3,593,386	\$32,625 Overstated
Disbursements	\$4,718,401	\$3,280,766	\$1,437,635 Overstated
COH December 31, 2008	(\$528,400)	\$771,978	\$1,300,378 Understated

According to the Referral, the overstatement of disbursements of \$1,437,635 in 2008 resulted from an unexplained over-reported difference of \$14,692, disbursements to a vendor of \$1,526,656 that NRTL PAC double reported, and other over-reported disbursements of \$80,357, offset by unreported disbursements of \$184,070.

The Referral notes that the duplicate reporting to the vendor, which constitutes the bulk of the overstated disbursements, was due to NRTL PAC's incorrect reporting of independent expenditures. NRTL PAC paid its printing vendor for independent expenditures in advance of the dissemination dates, and correctly reported these payments on Schedule B, line 21b, as operating expenditures. It also correctly disclosed the printed independent expenditures on Schedule E when it disseminated the materials. Once NRTL PAC disseminated the printed independent expenditure materials, it also should have subtracted the amounts of these

13044333506

1 expenditures (the previously reported advances) from Schedule B, line 21b on its next disclosure
2 report. NRTL PAC failed to do so, however, substantially inflating total disbursements by
3 reporting those disbursements twice, once on Schedule B and again on Schedule E.³

4 In response to the Interim Audit Report's recommendation, NRTL PAC amended its
5 reports to properly disclose 2007 and 2008 activity.

6 **B. Legal Analysis**

7 The Federal Election Act of 1971, as amended (the "Act"), requires treasurers to file
8 reports disclosing the amount of cash-on-hand at the beginning and end of each reporting period;
9 the total amount of receipts for the reporting period and for the calendar year; and the total
10 amount of disbursements for the reporting period and for the calendar year. See

11 2 U.S.C. § 434(b)(1), (2), (4). NRTL PAC did not comply with the Act's reporting requirements
12 when it overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624, and
13 overstated ending cash-on-hand by \$104,632 in 2007; and when it overstated disbursements by
14 \$1,437,635 and understated ending cash-on-hand by \$1,300,378 in 2008. Therefore, we
15 recommend that the Commission find reason to believe that NRTL PAC violated 2 U.S.C.
16 § 434(b).

17
18
19
20
21

³ During the audit hearing, NRTL PAC's counsel stated that most of the misstatement resulted from this bookkeeping error. Referral at 3. Counsel explained that NRTL PAC became aware of a reporting error due to a negative cash-on-hand balance prior to filing its disclosure reports, filed those reports with the incorrect negative cash-on-hand balance, and subsequently discovered the cause of the error shortly before the audit began. *Id.* at 3-4.

13044333507

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

13044333508

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18

13044333509

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that National Right to Life PAC and Joseph M. Landrum in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with National Right to Life PAC and Joseph M. Landrum in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.

6. Approve the appropriate letter.

9/27/12
Date

A. Herman
Anthony Herman
General Counsel

Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

Attachments:

1. Final Audit Report

13044333511



Final Audit Report of the Commission on the National Right to Life Political Action Committee

January 1, 2007 - December 31, 2008

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to the matter discussed in this report.

About the Committee (p. 2)

The National Right to Life Political Action Committee is a separate segregated fund of the National Right to Life Committee and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - From Individuals \$ 3,662,627
 - From Other Political Committees 9,850
 - Offsets to Operating Expenditures 4,051
 - Total Receipts \$ 3,676,528**
- **Disbursements**
 - Operating Expenditures \$ 567,680
 - Independent Expenditures 2,804,925
 - Contributions to Other Committees 13,750
 - Total Disbursements \$ 3,386,355**

Commission Finding (p. 3)

- **Misstatement of Financial Activity**

¹ 2 U.S.C. §438(b).

13044333512

**Final Audit Report of the
Commission on the
National Right to Life Political
Action Committee**

January 1, 2007 – December 31, 2008



13044333513

Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Limitations	1
Audit Hearing	1
Part II. Overview of Committee	
Committee Organization	2
Overview of Financial Activity	2
Part III. Summary	
Commission Finding	3
Part IV. Commission Finding	
Misstatement of Financial Activity	4

1304433514

Part I

Background

Authority for Audit

This report is based on an audit of the National Right to Life Political Action Committee (NRL PAC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by related committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and, as a result, this audit examined:

1. the disclosure of disbursements, debts and obligations;
2. the disclosure of individual contributors' occupation and name of employer;
3. the consistency between reported figures and bank records;
4. the completeness of records; and
5. other committee operations necessary to the review.

Limitations

NRL PAC satisfied the recordkeeping requirements of 11 CFR §102.9 concerning disbursements. Testing of independent expenditures and debts was limited to a review of the disbursement records NRL PAC provided to the Audit staff. Absent review of external documentation such as some invoices and broadcast station information, the Audit staff was unable to determine whether reporting independent expenditures or debts was required.

Audit Hearing

NRL PAC requested a hearing before the Commission. The request was granted and the hearing was held on February 15, 2012. At the hearing, NRL PAC addressed issues related to the scope limitation, the misstatement of financial activity and the disclosure of occupation and name of employer information.²

² New information presented by NRL PAC at the hearing resulted in the removal of a finding on the disclosure of occupation and name of employer information from the audit report.

Part II Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 12, 1979
• Audit Coverage	January 1, 2007 - December 31, 2008
Headquarters	
Washington, DC	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Two
Treasurer	
• Treasurer When Audit Was Conducted	Carol Tobias (October 29, 2009 – June 9, 2011) Joseph M. Landrum (June 10, 2011 – Present)
• Treasurer During Period Covered by Audit	Amarie Natividad (January 1, 2007 – September 3, 2008) Carol Tobias (September 4, 2008 – December 31, 2008)
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2007	\$ 481,805.
Receipts	
o From Individuals	3,662,627
o From Other Political Committees	9,850
o Offsets to Operating Expenditures	4,051
Total Receipts	\$ 3,676,528
Disbursements	
o Operating Expenditures	567,680
o Independent Expenditures	2,804,925
o Contributions to Other Committees	13,750
Total Disbursements	\$ 3,386,355
Cash-on-hand @ December 31, 2008	\$ 771,978

Part III Summary

Commission Finding

Misstatement of Financial Activity

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report.

The Commission approved both parts of a finding that NRL PAC misstated financial activity for 2007 and 2008. (For more detail, see p. 4.)

Part IV

Commission Finding

Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report.

The Commission approved both parts of a finding that NRL PAC misstated financial activity for 2007 and 2008.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements) or Schedule E (Itemized Independent Expenditures). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Misstatement of Activity on Amended Reports as Compared with Bank Records

1. Facts

During audit fieldwork, the Audit staff reconciled reported activity with bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning and ending cash balances, receipts and disbursements for each year. Subsequent paragraphs address the reasons for the misstatements.

2007 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2007	\$612,737	\$481,805	\$130,932 Overstated
Receipts	\$53,518	\$83,142	\$29,624 Understated
Disbursements	\$102,265	\$105,589	\$3,324 Understated
Ending Cash Balance @ December 31, 2007	\$563,990	\$459,358	\$104,632 Overstated

The overstatement of the beginning cash-on-hand by \$130,932 likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• Bank interest not reported	\$ 14,771
• Vendor refunds for radio ads not reported	4,051
• Unexplained difference	<u>10,802</u>
Understatement of receipts	<u>\$ 29,624</u>

The misstatements described above resulted in a \$104,632 overstatement of the ending cash-on-hand.

2008 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2008	\$563,990	\$459,358	\$104,632 Overstated
Receipts	\$3,626,011	\$3,593,386	\$32,625 Overstated
Disbursements	\$4,718,401	\$3,280,766	\$1,437,635 Overstated
Ending Cash Balance @ December 31, 2008	\$(528,400)	\$771,978	\$1,300,378 Understated

The overstatement of disbursements resulted from the following:

• Unreported disbursements	\$ 184,070
• Disbursements to printing vendor reported twice	(1,526,656)
• Over-reported disbursements	(80,357)
• Unexplained difference	<u>(14,692)</u>
Net overstatement of disbursements	<u>\$ (1,437,635)</u>

The duplicate reporting of \$1,526,656 in disbursements to the printing vendor was due to incorrect reporting of independent expenditures. NRL PAC paid for these independent

expenditures in advance of the dissemination dates. NRL PAC should have reported these advance payments on Schedule B, Line 21b, as operating expenditures. Once NRL PAC distributed the printed materials, it should have subtracted the amounts of these expenditures from Line 21b and reported them as independent expenditures on Schedule E. NRL PAC currently reported these expenditures on Line 21b when the payments were made, then correctly disclosed the independent expenditures on Schedule E upon dissemination of the materials. However, NRL PAC failed to subtract the amount of the independent expenditures from Line 21b.

The misstatements described above resulted in a \$1,300,378 understatement of the ending cash-on-hand.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. NRL PAC representatives stated that the committee would file the necessary amended reports. Amended reports filed by NRL PAC after the exit conference corrected some, but not all, of the misstatements.

The Interim Audit Report recommended that NRL PAC:

- amend its reports to correct the remaining misstatements noted above;
- reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments; and
- adjust cash as necessary on its most recent report, noting that the change is the result of prior-period adjustments.

3. Committee Response to Interim Audit Report

NRL PAC filed amended 2007 and 2008 reports to properly disclose activity as recommended. In a subsequent communication, the current NRL PAC treasurer stated that the committee would reconcile the most recent cash balance and include the revised figure on the next report filed to comply with the recommendation.

4. Draft Final Audit Report

The Draft Final Audit Report noted that, in response to the Interim Audit Report, NRL PAC amended its reports to properly disclose activity as recommended by the Audit staff.

5. Committee Response to the Draft Final Audit Report

NRL PAC requested an Audit Hearing. In addition, NRL PAC noted that the misstatement was largely due to a bookkeeping error.

6. Audit Hearing

During the audit hearing, NRL PAC counsel reiterated that most of the misstatement resulted from a simple mistake. He explained that NRL PAC became aware of this reporting error due to a negative cash-on-hand balance prior to filing its disclosure reports. NRL PAC filed the reports with the incorrect negative cash balance and subsequently discovered the cause of

the error shortly before commencement of the audit. Corrective amendments were filed in response to the Interim Audit Report.

Commission Conclusion

On May 24, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find NRL PAC misstated its activity in 2007 and 2008.

The Commission approved the Audit staff's recommendation.

B. Misstatement of Activity Reported on Original Reports as Compared with Bank Records

1. Facts

In addition to examining the most recent reports filed by NRL PAC prior to the audit, the Audit staff compared the original reports filed with the bank records and discovered a \$687,536 overstatement of disbursements in 2007 and 2008. This misstatement was largely due to the incorrect reporting of independent expenditures as noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements.

The Interim Audit Report recommended that NRL PAC submit any additional information or written comments it considers relevant to the matter.

3. Committee Response to Interim Audit Report

NRL PAC did not submit any additional information or written comments regarding this matter.

4. Draft Final Audit Report

The Draft Final Audit Report noted that NRL PAC did not address this issue in its response to the Interim Audit Report.

5. Committee Response to the Draft Final Audit Report

NRL PAC did not specifically address this issue in its response to the Draft Final Audit Report.

6. Audit Hearing

This issue was not specifically addressed at the Audit Hearing.

Commission Conclusion

On May 24, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find NRL PAC misstated its activity in 2007 and 2008.

The Commission approved the Audit staff's recommendation.